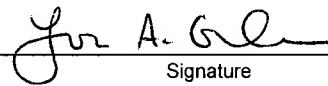
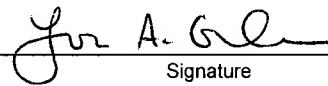
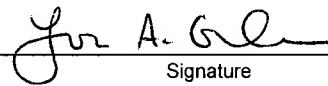


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PTO/SB/33 (09-08)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1875.4310002							
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">Application Number 09/610,722</td><td style="width: 50%; padding: 5px;">Filed July 6, 2000</td></tr><tr><td colspan="2" style="padding: 5px;">First Named Inventor Suresh KRISHNA</td></tr><tr><td style="padding: 5px;">Art Unit 2436</td><td style="padding: 5px;">Examiner Colin, Carl G.</td></tr></table>		Application Number 09/610,722	Filed July 6, 2000	First Named Inventor Suresh KRISHNA		Art Unit 2436	Examiner Colin, Carl G.
Application Number 09/610,722	Filed July 6, 2000								
First Named Inventor Suresh KRISHNA									
Art Unit 2436	Examiner Colin, Carl G.								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input type="checkbox"/> attorney or agent of record. Registration number _____</p><p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>50,633</u></p></td><td style="width: 50%; vertical-align: top; text-align: center;"><p> _____ Signature Lori A. Gordon _____ Typed or printed name (202) 371-2600 _____ Telephone number <u>February 24, 2009</u> _____ Date</p></td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>50,633</u></p>	<p> _____ Signature Lori A. Gordon _____ Typed or printed name (202) 371-2600 _____ Telephone number <u>February 24, 2009</u> _____ Date</p>				
<p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>50,633</u></p>	<p> _____ Signature Lori A. Gordon _____ Typed or printed name (202) 371-2600 _____ Telephone number <u>February 24, 2009</u> _____ Date</p>								
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>									

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

KRISHNA *et al.*

Appl. No.: 09/610,722

Filed: July 6, 2000

For: **Classification Engine in a
Cryptography Acceleration Chip**

Confirmation No.: 5437

Art Unit: 2436

Examiner: Colin, Carl G

Atty. Docket: 1875.4310002

Arguments to Accompany the Pre-Appeal Brief Request for Review

Mail Stop AF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby submit the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review Form (PTO/SB/33). A Notice of Appeal is concurrently filed.

Arguments

Applicants' arguments in the Amendment and Reply under 37 C.F.R. § 1.111 filed on July 23, 2008 (hereinafter "Reply"), were not properly considered or responded to by the Examiner in the final Office Action mailed October 24, 2008 (hereinafter the "Final Office Action"). In the Final Office Action, independent claims 46 and 64 were rejected under 35 U.S.C. § 103 as being allegedly unpatentable over Feiken, et al, U.S. Patent No. 5,870,479 (Feiken) in view of Ellis, U.S. Patent No. 6,484,257 (Ellis). The Examiner's response was legally and factually deficient because the Examiner failed to show that the cited references taught each and every feature of independent claims 46 and 64.

The combination of Feiken and Ellis fails to teach or suggest "a classification module in the device that determines security association information associated with

each data packet in a plurality of data packets associated with a data flow between a source and destination, wherein the classification module is configured to determine the security association information for the plurality of data packets simultaneously," as recited in independent claim 46. The combination of Feiken and Ellis further fails to teach or suggest "receiving, in the device, at least a portion of a header for each data packet in a plurality of data packets associated with a data flow between a source and destination; simultaneously determining security association information associated with each data packet in the plurality of data packets in the data flow," as recited in independent claim 64.

In contrast, Feiken describes an identification unit that processes data packet headers in sequence. In Feiken, a "data packet which enters the device 1 is first temporarily stored in the buffer 10. During this time, the header of the packet is copied to the identification unit 14, where the channel (in the case of ATM, the virtual channel or the virtual path) of the data packet is determined." (Feiken, col. 3, line 66 - col. 4, line 3.) Using this identification, the control unit "activates the other sections of the device." (Feiken, col. 4, lines 3-7.) In Feiken, "the buffer 10 is instructed to release the data packet concerned, while the memory 13 is instructed to place the information belonging to said channel (for example, the key and the status of the encrypting/decrypting procedure, and optionally the software of a processing) on the bus 15." (Feiken, col. 4, lines 8-14.)

The Examiner states that because "Feiken et al discloses each processing unit may have its own buffer (see column 4, lines 21-25) and since different channels can be used to assign data packets, it is clear to one of ordinary skill in the art that that the

control means could assign data packets to more than one channel in parallel (see column 4, lines 25-48)." (Office Action, p. 4.) The Examiner offers no documentary evidence to support the assertion that because multiple processing units have their own buffers, it would be obvious that the identification unit determines security association information for a plurality of data packets simultaneously.

Such official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute." *See* M.P.E.P §2144.03 *citing In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970). The simultaneous classification of packets is not a fact that is capable of instant and unquestionable demonstration as being well-known. Feiken does not teach or suggest any architecture or modifications to the identification unit that would allow for the simultaneous classification of a plurality of packets.

Ellis fails to overcome these deficiencies of Feiken. In the Office Action, the Examiner cites to column 8, line 62 through column 9, line 12 in support of the assertion that Ellis teaches the feature of simultaneous classification, as recited in independent claims 46 and 64. Applicants respectfully disagree with the Examiner's understanding of Ellis.

Ellis describes a system and method for maintaining multiple simultaneous cryptographic sessions using a distributed computing environment. In Ellis, a client

connects and authenticates itself to a main server. (Ellis, 7:23-25.) If the main server has insufficient resources to service the session with the client, the main server instructs one or more agent servers to wake up and participate in a multiparty key exchange between the client, main server, and agent. (Ellis, 7:25-34.) The main server notifies the client and agent server(s) of the correct cipher to use for the session and any special information such as special ciphers for the different types of communications formats. (Ellis, 7:47-51.) The client and agent independently generate a session key to exchange data and then the client begins encrypting session communications with the agent using key and information from the main server. (Ellis, 7:53-57.) Thus, in Ellis, the key and cipher information is communicated to the client and agent from the main server *prior to the transmission of packets* from the client to the agent.

In the discussion of FIG. 5A referenced by the Examiner, Ellis describes the handling of tunneling packets at the Gateway. Specifically, Ellis states that the "Gateway then strips the GATEWAY HEADER+AGENT HEADER 5A30 and preappends an AGENT ID IP HEADER 5A60 for a packet composed of output packet 5A50." (Ellis, 8:63-66.) Modifying routing information in the header of a packet is not equivalent to determining security association information. As described above, Ellis distributes key materials prior to any transmission of a packet through the gateway.

Accordingly, the combination of Feiken and Ellis fails to teach or suggest "a classification module in the device that determines security association information associated with each data packet in a plurality of data packets associated with a data


flow between a source and destination, wherein the classification module is configured to determine the security association information for the plurality of data packets simultaneously," as recited in independent claim 46 and "receiving, in the device, at least a portion of a header for each data packet in a plurality of data packets associated with a data flow between a source and destination; simultaneously determining security association information associated with each data packet in the plurality of data packets in the data flow," as recited in independent claim 64.

Based on the above, Applicants respectfully request that the rejection of independent claims 46 and 64 as allegedly being obvious over Feiken and Ellis be reconsidered and withdrawn. Accordingly, Applicants respectfully request the rejection of dependent claims 47-63 and 65-70 be withdrawn as well.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Date: February 24, 2009

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